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| EXAMINER | |
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| LEIVA, FRANK M | |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 09/677,577 | MASUYAMA ET AL. | |
| | Examiner | Art Unit | |
| | FRANK M. LEIVA | 3714 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *14 March 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *2-8,10-14,23-29,31-35 and 43-64* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *7,8,28,29,43 and 44* is/are allowed.

6)☒ Claim(s) *2-6,10-14,23-27,31-35 and 45-64* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments, see Remarks, filed 14 March 2008, with respect to the rejection(s) of claim(s) 4, 25,47, 50, 52 and 54 under 35 U.S.C. §103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Nishiumi, Nitta, Motosyuku et al (US 5,602,566), and Tonomura et al, (US 6,183,365 B1).

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

**3. Claims 2, 5-6, 10-14, 23, 26-27, 31-35, 45, 48, 55, 57, 59 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishiumi, and further in view of Motosyuku et al (US 5,602,566).**

4. Regarding prior art combination, Nishiumi discloses a game console that uses a hand held housing to be operated by the player for user interface. Motosyuku discloses a known technique of using tilt sensors on a hand-held housing for user interface

5. **Regarding claims 2 and 23**; Nishiumi discloses a game system, associated with a display device, (fig. 1), the game system comprising:

A game apparatus having a game program storage device storing a game program and including a character data storage section to generate a display of a moving character movable on a game space; and processing device for executing the game program to generate a display of an image based on the result of processing by the processing device, (col. 7:42-46), A known character of Mario Bros.

Wherein said game program storage device stores game space data including image data to generate a display of a space for game play, and a display control program causes said display device to display a game space based on the game space data, (col. 24:36-49).

Said game program storage device includes a character control program to read out a moving character stored in said character data storage section and enable control related to said at least one of a change amount and a change direction applied to said housing based on an output of said change-state detecting device such that a display state of the moving character changes, (col. 7:42-46).

Nishiumi fails to disclose motion sensors that measure movement of a hand held housing.

Motosyuku discloses a housing to be held by a player; and a change-state detecting device related to said housing for detecting at least one of an amount and a direction of a change applied to said housing, (fig. 1, 4 and 5, col. 3-8).

Said change-state detecting device is to detect, as said at least one change amount and change direction, at least one of an amount and a direction of a tilt applied to said housing, (col. 2:8-16).

Said character control program moves the moving character within the displayed game space at a moving speed related to the at least one of an amount and a direction of a tilt applied to said housing so that the moving character changes position relative to the displayed game space based on the at least one of an amount and a direction of tilt applied to the housing and continues to change position relative to the displayed game space based on the at least one of an amount and a direction of tilt applied to the housing even if the tilt is maintained at a constant tilted state, (col. 2:8-19), where the output of the sensor is used to scroll a picture object or character if applied to the invention of Nishiumi.

Because both Nishiumi and Motosyuku teach methods of user operated hand held controls, it would have been obvious to one skill in the art at the time of applicant's invention to substitute the method of pointing using a joystick for the method of pointing by tilting the hand held device to achieve the predictable result of operating the player's controller by tilting the unit.

6. **Regarding claims 5, 26 and 45;** Nishiumi and Motosyuku disclose all the limitations recited in claims 2 and 23 from which claims 5, 26 and 45 depend on, although Nishiumi is silent about a sensing a motion applied to the hand held housing. Motosyuku discloses the tilt sensor, wherein said change-state detecting device is for detecting both of said amount and direction of a change applied to said housing, and said character control program moves the moving character within the displayed game space at a moving speed related to both of an amount and a direction of tilt applied to said housing, (col. 2:40-49), wherein the amount on movement of the character is dependent to the amount of tilt applied. Nishiumi does not teach applying the technique of measuring tilt of a housing, Motosyuku teaches a system that senses degrees of tilt of a housing. Nishiumi does teach measuring the specific amount of change of the sensors that it has to create a more detailed user interface. Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of gradient measurement as taught in Motosyuku, to improve tilt sensor interface of the combined Nishiumi and Motosyuku inventions for the predictable result of acquiring a better detailed reading of the controller movement.

7. **Regarding claims 6 and 27;** Nishiumi and Motosyuku disclose all the limitations recited in claims 2 and 23 from which claims 6 and 27 depend on, although Nishiumi is silent about a display on the hand held housing, Motosyuku discloses wherein said housing is a housing of said game apparatus, and said game apparatus being a portable game apparatus having said display device provided integrally on one main surface of said housing, (fig. 3), a self contained computer apparatus with built in display, known to contain games. A person of ordinary skill in the art, upon reading Motosyuku, would also have recognized the desirability of improving the game system of Nishiumi by including it

into a portable medium. Motosyuku teaches a method of having a computing device portable and hand held, one of a finite number of ways to design a computing apparatus. Furthermore, Motosyuku teaches a method of actuating the device by tilting it instead of pressing more buttons. Motosyuku also inherently discloses to one of ordinary skill in the art that combining a known sensing technique with the housing would facilitate user interaction. Thus, it would have been obvious to a person of ordinary skill in the art to try the portable housing of Motosyuku in an attempt to provide an improved gaming system, as a person with ordinary skill has good reason to pursue the known options within his or her technical grasp. In turn, because the portable game apparatus with built in display as claimed has the properties predicted by the prior art, it would have been obvious to make a portable game with a built in display and tilt sensor.

8. **Regarding claims 10 and 31;** Nishiumi and Motosyuku disclose all the limitations recited in claim 2 from which claims 10 and 31 depend on, and Nishiumi also discloses wherein said game program storage device further includes a non-player character data storage section to generate a display of a non-player character to make a first action on the game space according to a predetermined program irrespectively of an operation by the player, and said character control program provides control such that the non-player character makes a first action previously determined by a program when any of change states in amount and direction is not detected by said change-state detecting device, and such that the non-player character makes in addition to the first action a second action related to at least one of an amount and a direction of a change based on an output of said change-state detecting device when at least one of the change states in amount and direction is detected by said change-state detecting device, (col. 2:7-29), wherein the player by use of the operation controlling device, manipulates an object and independently controls the movement of another displayed object (background picture). Since the controller moves the main character towards the edge of the picture, the game system will adjust the background and scroll the 3-D space to accommodate the main character movement.

9. **Regarding claims 11 and 32;** Nishiumi and Motosyuku disclose all the limitations recited in claim 2 from which claims 11 and 32 depend on, and Nishiumi also discloses wherein the game space data including data to generate a display of a particular area defined such that, when the moving character moves within the game space, the moving character is different in action from that in another area, said character control program controlling a display state of the moving character related to the at least one of an amount and a direction of a change applied to said housing based on an output of said change-state detecting device, and display-controlling, when the moving character moves within the game space, the moving character being different in action from that in another area, (col. 20:47-57), wherein the Mario character is viewed differently by showing it as running or jugging according to the amount of change detected by the sensor.

10. **Regarding claims 12 and 33;** Nishiumi and Motosyuku disclose all the limitations recited in claim 2 from which claims 12 and 33 depend on, and Nishiumi also discloses wherein the game space data includes space data to generate a display of a greater game space than a display area to be displayed by said display device, the display control program including data to generate a display on said display device image data of a part of the game space existing in a range of the display area of the game space, and a simulation program simulating a state of only the game space existing in the display area based on the at least one of an amount and a direction of a change in an output of said change-state detecting device, (col. 18:46-52), wherein the system scrolls the background image to show more of the virtual space that what is viewed.

11. **Regarding claims 13 and 34;** Nishiumi and Motosyuku disclose all the limitations recited in claim 2 from which claims 13 and 34 depend on, and Nishiumi also discloses wherein said change-state detecting device detects as a change amount a moving amount of said housing and as a change direction a moving direction, the game space data including space data to generate a display of a game space greater than a display area of said display device, and the display control program displaying on said display device a space area of a part of a game space corresponding to the display area, and gradually

moving the display area of the game space in the moving direction by an area corresponding to the movement of the operation control device, (col. 2:7-29), since the controller moves the main character towards the edge of the picture, the game system will adjust the background and scroll the 3-D space to accommodate the main character movement. Nishiumi as mentioned above fails to disclose sensing the movement of the housing itself, which is covered by Motosyuku's invention and combined above.

12. **Regarding claims 14 and 35;** Nishiumi and Motosyuku disclose all the limitations recited in claim 2 from which claims 14 and 35 depend on, and Nishiumi also discloses wherein said game apparatus has operating device to be operated by a player on one main surface of said housing, and said character control enabling control based on a detection output of said change-state detecting device and an operating state of said operating device, (col. 1:44-55).

13. **Regarding claim 48;** Nishiumi and Motosyuku disclose all the limitations recited in claim 23 from which claim 48 depends on, and Nishiumi also discloses wherein the moving character is automatically moved by the character control program based on the at least one of an amount and a direction of the operation member, (col. 7:42-46), and Motosyuku discloses using a tilt sensor to operate an object in the screen, (col. 2:8-16). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to include, upon reading Motosyuku's disclosure, an automatic and instant feedback movement of the character would have been a predictable result.

14. **Regarding claims 55 and 57;** Nishiumi and Motosyuku disclose all the limitations recited in claims 2 and 23 from which claims 55 and 57 depend on, and Nishiumi also discloses wherein the character control program moves the moving character so that the moving character collides with another object in the virtual game space, (col. 18:64-67).

15. **Regarding claims 59 and 62;** Nishiumi and Motosyuku disclose all the limitations recited in claims 2 and 23 from which claims 59 and 62 depend on, and Nishiumi also

discloses wherein an operation key which may be manipulated by the player is provided through a portion of the housing, (col. 1:44-45).

**16. Claims 3, 24, 46, 49, 51, 53, 56, 58, 60 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishiumi, and further in view of Nitta.**

**17.** Regarding prior art combination, Nishiumi discloses a game console that uses a hand held housing to be operated by the player for user interface. Nitta discloses a known technique for player interface that employs accelerometer sensors to detect movement of a hand held housing.

18. **Regarding claims 3 and 24;** Nishiumi discloses a game system, associated with a display device: the game system comprising:

A game apparatus having a game program storage device storing a game program and including a character data storage section to generate a display of a moving character movable on a game space and a processing device for executing the game program to generate a display of an image based on the result of processing by the processing device, (col. 7:42-46, and col. 24:36-49), a known character of Mario Bros.

Wherein said game program storage device stores game space data including image data to generate a display of a space for game play, and a display control program causes said display device to display a game space based on the game space data, (col. 20:38-42), 3-D space.

Said game program storage device includes a character control program to read out a moving character stored in said character data storage section and enable control related to said at least one of a change amount and a change direction applied to said housing based on an output of said change-state detecting device such that a display state of the moving character changes, (col. 20:36-49).

Nishiumi fails to disclose motion sensors that measure movement of a hand held housing.

Nitta discloses a housing to be held by a player; and a change-state detecting device related to said housing for detecting at least one of an amount and a direction of a change applied to said housing, (fig. 1 and 7, col. 3:38-39).

Said change-state detecting device detects, as said at least one change amount and change direction, at least one of an amount and a direction of a sliding movement applied to said housing, and said character control program moves the moving character within the displayed game space at a moving speed related to the at least one of an amount and a direction of a sliding movement applied to said housing so that the moving character changes position relative to the displayed game space based on the at least one of an amount and a direction of sliding movement applied to the housing, (col. 6:15-21).

Because both Nishiumi and Nitta teach methods of user operated hand held controls, it would have been obvious to one skill in the art at the time of applicant's invention to substitute the method of pointing using a joystick for the method of pointing by sliding the hand held device to achieve the predictable result of operating the player's controller by sliding the unit.

19. **Regarding claims 46 and 49;** Nishiumi and Nitta disclose all the limitations recited in claims 3 and 24 from which claims 46 and 49 depend on, and Nishiumi also discloses wherein the moving character is automatically moved by the character control program based on the at least one of an amount and a direction of the operation member, (col. 7:42-46), and Nitta discloses using accelerometers to measure sliding movements to the right and left of a hand held housing and actuate automatically the movements of a human character, (col. 6:15-21). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to include, upon reading Nitta's disclosure, an automatic and instant feedback movement of the character would have been a predictable result.

20. **Regarding claims 51 and 53;** Nishiumi and Nitta disclose all the limitations recited in claims 3 and 24 from which claims 51 and 53 depend on, although Nishiumi is silent about a sensing a motion applied to the hand held housing. Nitta discloses the sliding sensing method, wherein said change-state detecting device is for detecting both of said

amount and direction of a change applied to said housing, and said character control program moves the moving character within the displayed game space at a moving speed related to both of an amount and a direction of side movement applied to said housing, (col. 6:15-21 and 9:24-40), wherein the amount on movement of the character is dependent to the amount of tilt applied. Nishiumi does not teach applying the technique of measuring sliding of a housing, Nitta teaches a system that senses degrees of side to side movement (sliding) of a housing. Nishiumi does teach measuring the specific amount of change of the sensors that it has to create a more detailed user interface. Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of gradient measurement as taught in Nitta, to improve the sliding sensor interface of the combined Nishiumi and Nitta inventions for the predictable result of acquiring a better detailed reading of the controller movement.

21. **Regarding claims 56;** Nishiumi and Nitta disclose all the limitations recited in claim 3 from which claim 56 depends on, and Nishiumi also discloses wherein the character control program moves the moving character so that the moving character collides with another object in the virtual game space, (col. 18:64-67).

22. **Regarding claims 58, 60 and 63;** Nishiumi and Nitta disclose all the limitations recited in claims 3 and 24 from which claims 58, 60 and 63 depend on, and Nishiumi also discloses wherein an operation key which may be manipulated by the player is provided through a portion of the housing, (col. 1:44-45).

**23. Claims 4, 25, 47, 50, 52, 54, 61, and 64 rejected under 35 U.S.C. 103(a) as being unpatentable over Nishiumi, and further in view of Tonomura et al, (US 6,183,365 B1).**

24. Regarding prior art combination, Nishiumi discloses a game console that uses a hand held housing to be operated by the player for user interface. Tonomura discloses a known technique of measuring impact with built sensors in a hand held housing.

25. **Regarding claims 4 and 25;** Nishiumi discloses a game system, associated with a display device, the game system comprising:

A game apparatus having a game program storage device storing a game program and including a character data storage section to generate a display of a moving character movable on a game space and a processing device for executing the game program to generate a display of an image based on the result of processing by the processing device, (col. 7:42-46, and col. 24:36-49), a known character of Mario Bros.

Wherein said game program storage device stores game space data including image data to generate a display of a space for game play, and a display control program causes said display device to display a game space based on the game space data, (col. 20:38-42), 3-D space.

Said game program storage device includes a character control program to read out a moving character stored in said character data storage section and enable control related to said at least one of a change amount and a change direction applied to said housing based on an output of said change-state detecting device such that a display state of the moving character changes, (col. 20:36-49).

Nishiumi fails to disclose motion sensors that measure movement of a hand held housing.

Tonomura discloses a housing to be held by a player; and a change-state detecting device related to said housing for detecting at least one of an amount and a direction of a change applied to said housing, (col. 1:51 – 2:6).

Said change-state detecting device detects, as said at least one change amount and change direction, at least one of an amount and a direction of an impact applied to said housing, (col. 1:56-66).

Said character control program moves the moving character within the displayed game space at a moving speed related to the at least one of an amount and a direction of an impact applied to said housing so that the moving character changes position relative to the displayed game space based on the at least one of an amount and a direction of impact applied to the housing, (col. 1:22-24)

Because both Nishiumi and Tonomura teach methods of user operated hand held controls, it would have been obvious to one skill in the art at the time of applicant's invention to substitute the method of actuating movement or collision using a button or switch for the method of actuating a collision in a game by detecting an applied simulated impact to the hand held device to achieve the predictable result of operating the player's controller by triggering impacts on the unit.

26. **Regarding claim 47;** Nishiumi and Nitta disclose all the limitations recited in claim 4 from which claim 47 depends on, and Nishiumi also discloses wherein the moving character is automatically moved by the character control program based on the at least one of an amount and a direction of the operation member, (col. 7:42-46), and Tonomura discloses using accelerometers to measure impact movements to the right and left of a hand held housing and actuate automatically the movements of a human character, (col. 1:51-66). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to include, upon reading Nitta's disclosure, an automatic and instant feedback movement of the character would have been a predictable result.

27. **Regarding claim 50;** Nishiumi and Tonomura disclose all the limitations recited in claim 25 from which claim 50 depends on, and Nishiumi also discloses wherein the moving character is automatically moved by the character control program based on the at least one of an amount and a direction of the operation member, (col. 7:42-46), and Tonomura discloses using an impact sensor to operate an object in the screen, (col. 1:56-66). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to include, upon reading Tonomura's disclosure, an automatic and instant feedback movement of the character would have been a predictable result.

28. **Regarding claims 52 and 54;** Nishiumi and Tonomura disclose all the limitations recited in claims 4 and 25 from which claims 52 and 54 depend on, although Nishiumi is silent about a sensing a motion applied to the hand held housing. Tonomura discloses the impact sensor, wherein said change-state detecting device is for detecting both of said

amount and direction of a change applied to said housing, and said character control program moves the moving character within the displayed game space at a moving speed related to both of an amount and a direction of impact applied to said housing, (col. 1:56-2:6), wherein the amount on movement of the character is dependent to the amount of impact applied. Nishiumi does not teach applying the technique of measuring an impact to a housing, Tonomura teaches a system that senses degrees of acceleration of a housing which translate to impact, (col. 1:56-66). Nishiumi does teach measuring the specific amount of change of the sensors that it has to create a more detailed user interface. Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of gradient measurement as taught in Tonomura, to improve the impact sensor interface of the combined Nishiumi and Tonomura inventions for the predictable result of acquiring a better detailed reading of the controller movement.

29. **Regarding claims 61 and 64;** Nishiumi and Tonomura disclose all the limitations recited in claims 4 and 25 from which claims 61 an 64 depend on, and Nishiumi also discloses wherein an operation key which may be manipulated by the player is provided through a portion of the housing, (col. 1:44-45).

### *Allowable Subject Matter*

30. Claims 7-8, 28-29 and 43-44 are allowed. Refer to office action filed 09 November 2007.

### *Conclusion*

31. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until

after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANK M. LEIVA whose telephone number is (571)272-2460. The examiner can normally be reached on M-Th 9:30am - 5:pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FML 04/22/2008
/Scott E. Jones/
Primary Examiner, Art Unit 3714